THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 914 of 2001
Old F.A.F.O. No. 390 of 1987

Smt. Chandrakala W/O late Sri Lal Singh
R/O Gaudihat, Patti Naya Desh,
District Pithoragarh..

… **Appellant.**

Versus

1. State of U.P. Roadways Transport Corporation
   U.P. Through Deputy General Manager,
   Northern Zone Bareilly.
2. Commissioner, Workmen's Compensation Tribunal,
   District Pithoragarh.

… **Respondents.**

Sri Rajendra Dobhal, Advocate, learned counsel for the appellant.
Sri Kishore Kumar holding brief of Sri Ramji Srivastava, learned counsel for respondent no.1.
Sri Nand Prasad, learned Standing Counsel for the respondent no.2.

Date April 26, 2006.

(Hon'ble B.S. Verma, J.)

This appeal has been preferred under Section 30 of the Workmen Compensation Act, 1923 ***(for short the Act)*** against the judgment and award dated 31-3-1987 in W.C. Case No. 8 of 1986, Smt. Chandrakala Vs. U.P.S.R.T.C. whereby the claim petition preferred by the claimant-appellant was dismissed by the learned Compensation Commissioner (***for short the Commissioner***) on the ground that the amount of Rs. 24,000/- had already been paid to the claimant as final payment of compensation by the U.P.S.R.T.C.

Relevant facts of the case are that Lal Singh Budal, aged 39 years and driver of U.P.S.R.T.C. bus died in the course of his employment due to accidental injuries suffered by him while driving the bus. The claimant, who is widow of the said Lal Singh filed claim petition before the learned Commissioner on the ground that the amount of Rs. 24,000/- was paid to her towards compensation as per old provisions of the Act, while the amendment

in the Act became enforceable w.e.f. 1-7-1984 and she was entitled to get compensation of Rs. 59,808/- including the amount of Rs. 24,000/- along with interest as provided under the said Act.

Notice was issued to the respondent-UPSRTC, which has admitted the accidental death of Lal Singh in the course of his employment and asserted that full and final payment of compensation of Rs. 24,000/- was made to the claimant and receipt in token of payment was obtained, therefore, there was question of payment of further compensation to the claimant.

The learned Commissioner framed as many as five issues in the case. The learned Commissioner after perusing the evidence on record has held that the claimant had received amount of Rs. 24,000/- towards full and final payment of comp9ensation from the employer. It was also held that the monthly salary of the deceased Lal Singh was Rs. 763-43.

The substantial question of law involved in this appeal is whether the claim of the appellant was barred in view of the provisions of Section 4-A and 8 of the Act and Section 4 of the Act No. 22 of 1984?

I have heard learned counsel for the parties and perused the entire material on record.

It has been vehemently submitted on behalf of the claimant-appellant that the provisions of Section 4 of the Act were amended w.e.f. 1-7-1984 by Act No. 22 of 1984, while admittedly the death of the deceased Lal Singh took place on 20-10-1985 but the learned Commissioner has committed manifest error by ignoring the provisions of Section of 4 of the Act as prevailing at the time of accident. It has been contended that on this ground alone, the case has to be remanded to the learned Commissioner.

It has not been disputed that the amendment in Section 4 of the Act was made applicable by Act No. 22 of 1984 w.e.f. 1-7-1984 and the accident took place on 20-10-1985. From a bare perusal of the impugned judgment and order, it comes out that the learned Commissioner has not made any reference of the provisions of law on the point of compensation.

For a just decision of the appeal, provision of Section 8(1) of the Act is reproduced below:-

"8. Distribution of compensation- (1) No payment of compensation in respect of a workmen whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in case of a deceased workman, an employer may make to any dependant advances on account of compensation of an amount equal to three months' wages of such workman and so much of such amount as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer."

Section 4 of the Act deals with fixation of compensation and the procedure for working out the amount of compensation.

Undisputedly, amount of Rs. 24,000/- was paid direct to the claimant by the employer and receipt to that effect was obtained, though treating the same towards full and final payment of the compensation. But taking into consideration the provisions of sub-Section (1) of Section 8 of the Act, I am of the view that the amount of compensation under the Act has to be made by deposit with the Commissioner and the amount so paid by the employer shall be adjusted from the compensation fixed by the Commissioner. Since

the learned Commissioner without referring to the provisions of Section 4 of the amended Act has dismissed the claim petition on the ground that full and final payment of compensation of Rs. 24,000/- had already been made to the claimant. In my view, this approach of the learned Commissioner is erroneous in the eye of law. It is incumbent upon the Commissioner to workout the compensation as provided under Section 4 and in view of the provisions of Section 8, the amount of Rs. 24,000/- paid by the employer to the claimant shall be treated as advance payment, which shall be deducted from the amount of compensation to be fixed by the Commissioner. Since correct procedure has not been followed in the present case, therefore, it is a fit case for remand.

In view of the discussion aforesaid, I find force in this appeal, which is liable to be allowed.

The appeal is hereby allowed. The impugned order dated 31-3-1987 is set aside. The case is remanded to the learned Commissioner to decide the same afresh in accordance with law and in the light of the observations made above. No order as to costs.

(B.S.Verma, J.)

RCP